

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 16,907
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by PATH closing his son's Medicaid benefits.

FINDINGS OF FACT

1. Pursuant to a New Hampshire Superior Court decree dated August 4, 2000, the petitioner has joint legal custody of his four-year-old son. His son's mother has sole physical custody of him and the petitioner has visitation with his son which includes three weekends per month, holidays on alternating years and one to two weeks in the summer.

2. Pursuant to a support order issued the same day, the petitioner was required to provide health insurance coverage for his son by September 29, 2000. The petitioner, who is a Vermont resident, applied for Medicaid on September 25, 2000 for his son. (The petitioner himself is a VHAP recipient.) His son was granted eligibility as a child who met ANFC-related eligibility criteria retroactive to September 1, 2000.

3. Later upon review, the eligibility specialist determined (based upon the court order and information from the petitioner) that the petitioner's son was actually living with his mother in New Hampshire. Apparently there was no information on the original application that might alert the eligibility specialist to the possibility that the child might be in the physical custody of his mother. The petitioner was notified on January 17, 2001 that his son's Medicaid eligibility would be terminated because the son was not in the petitioner's household.

ORDER

The decision of PATH terminating the petitioner's son's Medicaid is affirmed.

REASONS

The petitioner's child was originally found eligible for Medicaid because PATH believed that he met ANFC eligibility criteria. A relationship to the ANFC program is necessary for a well child to be covered under the Medicaid program.

M 300.2 A. The criteria for ANFC eligibility require, among other things, that a child be "living with" a relative and

that the child be "living in" Vermont. W.A.M. § 2302.1 and 2302.

Under the New Hampshire Court order, the child's mother, who lives in New Hampshire, has sole physical custody of the child and the father has visitation. Under this scheme, the mother clearly has primary responsibility for the child's physical welfare. The Board has ruled in several prior cases that where parents share responsibility for caring for a child, the child is deemed to be "living with" the parent who is the primary caretaker. Fair Hearing Nos. 14,613 and 15,433. The secondary caretaker cannot apply for benefits for the child because only one ANFC grant may be paid per child. Thus, the petitioner, as the secondary caretaker cannot apply for benefits for his son because the child is not considered to be a member of his household for ANFC purposes. If a ruling were made otherwise, the boy's mother could obtain Medicaid for him in New Hampshire and the boy's father could obtain the same benefits in Vermont.

In addition, under the regulations, the boy is deemed to be a resident of the state in which the caretaker he is "living with" resides. As the boy is "living with" his mother (the primary caretaker), for purposes of the ANFC regulations, he resides in New Hampshire, her state of residence. W.A.M.

2302. As a New Hampshire resident, the boy is not eligible for Vermont ANFC and is thus not eligible for Medicaid.

W.A.M. 2302 and M. 300.2 A. The Department's decision terminating the petitioner's son's eligibility is in accord with the regulations and must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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